रजिस्ट्री सं० डी० 221 REGISTERED NO. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 19] नई दिल्ली, मंगलवार, मई 2, 1972/वैशाख 12, 1894
No. 19] NEW DELHI, TUESDAY, MAY 2, 1972/VAISAKHA 12, 1894

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Report of the Select Committee on the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto was presented to the Lok Sabha on the 2nd May, 1972:—

COMPOSITION OF THE COMMITTEE

Dr. G. S. Melkote—*Chairman*

MEMBERS

2. Shri R. D. Bhandare
3. Shri Dinen Bhattacharya
4. Shri M. C. Daga
5. Shri C. T. Dhandapani
6. Shri Jagdish Chandra Dixit
7. Shri S. B. Giri
*8. Shri Hukam Chand Kachwai
9. Shri Raja Kulkarni
10. Shri Prasannbhai Mehta
11. Shri Jagannath Mishra
12. Shri N. Sreekantan Nair
13. Shri Damodar Pandey
14. Shri S. Radhakrishnan
15. Shri Ranen Sen

*Appointed on 23-12-71 *vice* Shri R. R. Sharma.

16. Shri R. N. Sharma
17. Shri C. M. Stephen
18. Shri G. Venkatswamy
19. Shri Balgovind Verma
20. Shri R. K. Khadilkar

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel, Ministry of Law and Justice.*

Shri V. S. Bhasyam, *Deputy Legislative Counsel, Ministry of Law and Justice.*

REPRESENTATIVES OF THE MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour and Employment)

1. Shri P. M. Nayak, *Secretary.*
2. Shri D. S. Nim, *Joint Secretary.*
3. Shri Mahesh Chandra, *O.S.D. (L).*
4. Shri Daljit Singh, *Under Secretary.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, plantations, shops or other establishments and for matters connected therewith or incidental thereto was referred to, having been authorised to submit the Report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 10th December, 1971. The motion for reference of the Bill to a Select Committee was moved by Shri R. K. Khadilkar, Minister of Labour and Rehabilitation, on the 21st December, 1971 and was adopted on the same day.

3. The Committee held eleven sittings in all.

4. The first sitting of the Committee was held on the 24th December, 1971. The Committee at this sitting decided to take up clause-by-clause consideration of the Bill from their next round of sittings.

5. Twenty-two memoranda/representations/comments on the Bill were received by the Committee from different associations, individuals, etc.

6. The Report of the Committee was to be presented by the "last day of the first week of the next Session" i.e. the Budget Session of Lok Sabha (1972). As this could not be done, the Committee were granted extension of time on the 15th March, 1972 upto the 1st May, 1972.

7. The Committee considered the Bill clause-by-clause at their second, third, fifth, sixth, seventh, eighth and tenth sittings held on the 21st and 22nd January, 17th, 18th, 19th, 20th and 26th April, 1972 respectively.

8. The Committee have decided that a set of memoranda/representations, etc. submitted by various associations, individuals, etc. should be placed in Parliament Library for reference by members.

9. The Committee considered and adopted the Report on the 28th April, 1972.

10. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

11. *Clause* 2.—(*i*) *Sub-clause* (*c*)—*Definition of 'continuous service'*.—Under the Kerala Industrial Employees' Payment of Gratuity Act, 1970, the period of strike is included in 'continuous service'. Under the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, the period of illegal strike does not form part of 'continuous service'. The definition of 'continuous service' in the Bill is the same as in the West Bengal Act, 1971 which was enacted by the President after consultation with the Consultative Committee of Parliament for West Bengal. It was contended before the Committee that since the Industrial Disputes Act, 1947 contained penalties for going on illegal strike, the Bill should not contain any additional penalties for going on illegal strike. It was also stated before the Committee that employers sometimes provoke strikes by acts of victimisation. **Taking all aspects into consideration, the Committee suggest**

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 10th December, 1971.

that the definition of 'continuous service' may, for the time being, remain unchanged subject to the modification that periods of "lay off" may also be considered as part of continuous service and Government may be requested to reconsider the matter. The Committee further feel that uninterrupted or interrupted service, whether rendered before or after the commencement of the proposed legislation, should count for determining 'continuous service'.

The Committee also feel that an Explanation may be added to the definition of 'continuous service' to the effect that an employee who works—

(a) in a mine below the ground for 190 days, or

(b) in any other case, for 240 days,

in a year, should be deemed to be in continuous service.

The Committee also feel that in the case of persons employed in seasonal establishments, such persons would be deemed to be in continuous service if they had been employed for 75 per cent of the days during which the establishment had been in operation during the season.

(ii) *Sub-clause (e)—Definition of 'employee'*— **In order to widen the coverage of the Bill, the Committee recommend that the present limit of Rs. 750/- be raised to Rs. 1000/- per mensem as provided in the Employees' Provident Fund Scheme.**

The Committee feel that it should be ensured that a person who was initially employed on wages not exceeding Rs. 1000/- per mensem and had been employed for a continuous period of 5 years on wages not exceeding Rs. 1000/- per mensem may not become disentitled to receive gratuity when his wages exceed Rs. 1000/- per mensem. **The Committee, therefore, recommend that in the case of such an employee, gratuity should be paid in respect of the period during which the employee was employed on wages not exceeding Rs. 1000/- per mensem on the basis of the wages received by him during that period.**

The Committee further feel that the provisions of the Bill should not be confined to major ports only. They should also be made applicable to the workers of both major and minor ports.

Further the definitions of expressions "factory", "mine" and "plantation" have been inserted in clause 2 instead of in clause 1. In order to cover both major and minor ports, the expression "port" has also been defined.

12. *Clause* 4.—(i) *Sub-clause* (1)—During the course of discussion, it was suggested that there should be no qualifying period in cases of superannuation and retrenchment/discharge, while a qualifying period might be prescribed in cases of resignation and termination of service as a result of disciplinary action and that the qualifying period of five years might be reduced to three years or even less. It was also suggested that it might be clarified that gratuity will be admissible only on termination of service. **The Committee have considered these matters in detail and feel that a qualifying period of five years' service for purposes of payment of gratuity may continue. However, there should be no qualifying period of service for payment of gratuity in cases of death or termination of service because**

of any disablement due to accident or disease and not merely for total disablement as originally provided in the Bill. The sub-clause has been amended to provide for the aforesaid matters.

(ii) *New sub-clause (1A) [re-numbered as sub-clause (4)]*— **The Committee feel that it should be made clear that for the purposes of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement should be taken to be the wages received by him during that priod, and for the period subsequent to his disablement, on the basis of the wages as so reduced. A new sub-clause has been inserted accordingly.**

(iii) *Sub-clause (2) [re-numbered as sub-clauses (2) and (3)]*—Gratuity is payable under the existing sub-clause at the rate of 15 days' wages (basic wage plus dearness allowance) based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months, subject to a ceiling of 15 months' wages. This clause does not, however, specify how the rate of wages last drawn will be determined in the case of piece-rated workers. **The Committee feel that it should clearly be specified in the Bill that in the case of piece-rated workers, the wages last drawn will be the average of total earnings, excluding overtime payments, over a period of 3 months immediately preceding the termination of service. The Committee also feel that in the case of seasonal establishments, gratuity may be paid at lower rate, i.e. 7 days' wages for each season. The Committee also feel that the ceiling on the gratuity amount to be paid to an employee be raised from 15 months' wages to 20 months' wages so as to provide an incentive to employees to work beyond thirty years of service. The sub-clause has been amended to provide for these matters.**

(iv) *Sub-clause (3) [re-numbered as sub-clause (6)]*—It was suggested that entire sub-clause (3) might be omitted so that gratuity which an employee earned by virtue of service over a period might not be subject to any forfeiture, whether for any misconduct or for any other conduct on his part as this provision might be exploited and abused by unscrupulous employers. The concept underlying this provision is that where the termination of the service of an employee has been made for conduct which has caused any loss to the employer or which is riotous, disorderly or violent or which is an offence involving moral turpitude, such conduct should, on the part of an employee, entail certain consequences either by way of reduction of the gratuity payable or by its total forfeiture. **The Committee feel that the existing provision may be retained for the time being and the Government may be requested to reconsider the matter.**

(v) *Sub-clause (3) (b) (ii) [re-numbered as sub-clause (6) (b) (ii)]* provides that gratuity is to be forfeited if the services of an employee are terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment or at any place which is in, or in the vicinity of, his place of employment. This provision may, however, be interpreted to mean that gratuity might be forfeited if an offence was committed by an employee in the place of employment or in its vicinity, otherwise than in the course of employment. **The Committee feel that it should be made clear that gratuity be subjected to forfeiture only if the offence is committed in the course of his employment but not otherwise. In order to**

provide for the aforesaid matters, the sub-clause has been amended suitably.

13. *Clause* 5.—The change made is of drafting nature.

14. *Clause* 6—*Sub-clause* (7).—Each employee who has completed one year of service shall nominate a person in the prescribed form who will be paid gratuity in the case of his death and every nomination, fresh nomination or alteration of nomination will be sent by the employee to the employer who would keep the same in his safe custody. **The Committee feel that a copy each of such nomination form received from an employee should be forwarded by the employer to the controlling authority and also to the nominee. The Committee desire that the rules made under the Act should provide for this.**

15. *Clause* 7.—The clause as it exists does not provide for moving the controlling authority by an employee to take action specified in sub-clause (4)(b) in cases where there is a dispute with regard to the amount of gratuity payable to an employee or as to the admissibility of any claim of an employee for payment of gratuity. **The Committee feel that the employee should be given the power to make the application to the controlling authority for such a purpose. It should also be specifically provided that the controlling authority, as soon as may be after a deposit is made by the employer under sub-clause (a), shall pay the amount of the deposit to the employee or, in his absence, to his nominee or heir if there is no dispute as to right of applicant, claiming the amount. The clause has been amended to provide for the aforesaid matters.**

16. *Clause* 8.—The clause provides that in cases of default in payment of gratuity, the controlling authority shall, on an application made to it by the aggrieved person, issue a certificate for the amount of gratuity payable to the Collector who shall recover the same as arrears of land revenue and pay it to the person entitled thereto. **The Committee feel that, in such cases, compound interest at the rate of nine per cent per annum thereon should also be recovered from the employer and paid to the person entitled thereto. The clause has been amended accordingly.**

17. *Clause* 9.—During the course of discussion, it was suggested that defaults in making gratuity payments (and not contraventions of a technical or administrative nature) should be punishable with nothing but imprisonment. **The Committee have considered this matter and feel that in cases where an employer fails to pay the amount of gratuity to the employee, punishment should be more stringent. The clause has been amended accordingly.**

18. *New clause 9A (re-numbered as clause* 10).—While considering the penal provisions, as contained in clause 9, it was brought to the notice of the Committee that an employer may not be aware of any of the contraventions of the provisions of the Act which might have been committed by a person other than the employer and in such cases it would be unfair to punish the employer for the acts and omissions of that person. **In order to give an opportunity to the employer to prove before the Court that the alleged contravention was committed without his knowledge, consent or connivance and that he used due diligence on his part to enforce the execution of the Act, a new provision has been made in the new clause 9A.**

19. *Clause* 10 *(re-numbered as clause* 11) Under this clause, no court would take cognizance of any offence save on a complaint made by or

under the authority of the appropriate Government. It was suggested that the aggrieved party *i.e.* the employee might also be authorised to move the court and launch prosecution. It was pointed out that this clause was designed to prevent false and frivolous prosecutions and unsubstantiated complaints and that a similar provision exists in all labour laws. **The Committee have considered this aspect of the matter and feel that it would be sufficient, if a specific provision is made to authorise the controlling authority to make complaint to a competent court against the employer, where the amount of gratuity has not been paid or recovered within six months from the expiry of the prescribed time and thus set in motion the prosecution proceedings against the offenders.**

20. *Clause* 11 (*re-numbered as clause* 12).—The amendment made in this clause is of a drafting nature.

21. *New clause* 11*A* (*re-numbered as clause* 13).—Taking into consideration the objects of the Bill, **the committee feel that it would be appropriate to give complete protection to the amount of gratuity payable to an employee from being attached in execution of any decree or order of any civil, revenue or criminal court. Accordingly a new clause 11A has been added.**

22. *Clause* 12 (*re-numbered as clause* 15).—The Committee on Subordinate Legislation of both Houses of Parliament have approved a revised model clause for the laying, before Parliament, of rules, etc., made by the Central Government under Central Acts. The amendments made in this clause are with a view to bringing this clause in conformity with the revised model clause approved by the above-mentioned Committees.

23. *Clause* 1.—The amendments made in this clause are to make the application provision in sub-clause (3) to conform to the provision in clause 2(e).

24. *Enacting Formula.*—The change made in the Enacting Formula is of a formal nature.

25. The Select Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
April 28, 1972.
Vaisakha 8, 1894 (*Saka*)

G. S. MELKOTE,
Chairman,
Select Committee.

MINUTES OF DISSENT

"The Payment of Gratuity Bill, 1971. A Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, plantations, shops or other establishments and for matters connected therewith or incidental thereto."

This is the object of the Bill but the Bill as it does not cover a large group of workers.

Sub-clause (3) (a) of Clause 1 covers the workers of factory, mine, oil-field, plantation, port and railway company. Sub-clause (3) (b) covers shop or establishment and sub-clause (3) (c) covers the residuary

establishments or class of establishments provided appropriate Government specify them by notification. Therefore the scope of the coverage appears to be very limited. This is the social legislation and it should cover a wide range of the workers of different institutions, organisations and industries. Therefore, we differ with the provision of sub-clause (3) of Clause 1 and suggest to add the workers of different groups as under:—

Workers of any local body;
Workers of any transport;
Workers of any contract labour;
Workers of any construction industry;
Workers of any educational institution, hospitals;
Workers of any canteen, club and co-operative societies; and
Workers of any religious endowments.

2. As the industrial relationship between the workers and management in the industrial units, such as, railways, factories, public undertakings, shops and establishments is prevailing today, workers sometimes become victims of unreasonable and inhuman approach of the management. The action causing gross injustice to the workers sometimes inadvertently results into a strike or wild-cat strike. Such strikes are not always legal in the sense of legal terms. Sub-clause (c) of Clause 2 defines the "continuous service" and the continuous service will not be considered continuous if the strike is not legal. The working conditions, unreasonable and inhuman approach of the management and inadequate machinery for the redressal of grievances provoke and compel the workers sometimes to strike the work. Under such forced circumstances it should not adversely affect the continuity of the service. Therefore, the words "which is not illegal" occurring in the definition of "continuous service" should be omitted to protect the workers' interest.

3. Sub-clause (6) of Clause 4 makes a provision for forfeiting the gratuity. The gratuity is considered a benefit to be enjoyed after superannuation, retirement or resignation or death or disablement due to accident or disease against the services put up by a worker. Therefore, the concept of forfeiture is totally against the principle and general norms of industrial relationship. Therefore, Sub-clause (3) of Clause 4 should not take any place on the statute.

4. The Bill does not provide proper mechanism for safeguarding the amount of gratuity payable to the employees. A scheme similar to that of provident fund or trust to administer the fund of gratuities to be created from the amount that becomes due every year calculated on the basis of service of each employee by some reasonable rate shall serve the purpose of safeguarding the gratuity of the employees. The Administration of such trust may be handed over to each State by creating a body for the purpose or may be handed over to the Regional Provident Fund Commissioner or to the LIC. This mechanism will give some advantages not only to the workers but to the cause of general development, taking over of closed units, removing the hurdle in the way, scrapping closed and economically unviable units. It may also facilitate re-starting of the closed units by the new management and may also reduce the pressure of the Government to take over the closed units.

5. Clause 9 provides the penalities for avoiding any payment to be made by employer under this Act or enabling any other person to avoid such payments. The provision of the penalties appears to be on lower side and it will not serve the purpose. After the experience of the implementation of Provident Fund Scheme and defalcation on a large scale by the employers have proved without any iota of doubt that the penalty provision should be made more stringent for such piece of legislation. Therefore, it is in the interest of the working class that the defaulters cannot have any other punishment than the imprisonment. Therefore, it is suggested that the clauses should be amended for stringent penalty as suggested below:

(i) In Clause 9, Sub-clause (1), *substitute* the words "six months" by words "one year" and *delete* the remaining sentence.

(ii) In Clause 9, Sub-clause (2) *substitute* the words "three months" by the words "one year" and *delete* the remaining sentence.

6. In the Bill there is no provision for the worker or his nominee or his agent to approach straight any Court of Law if he finds that his case has not been properly taken up by the Government machinery. The whole approach is that the State machinery will move in the matter. From our experience of the functioning of the Employees' Provident Fund Act authorities we find that the employers go scotfree even though they do not make their statutory contributions to Employees' Provident Funds. In the present Bill this experience should have led the Government to give some right to the workers to move a competent Court of Law for penal action if he feels aggrieved.

We, therefore, suggest the deletion of Clause 11 which will mean that an aggrieved would be free to move the competent Court for penal action.

NEW DELHI;
April 28, 1972.

PRASANNBHAI MEHTA
RANEN SEN
S. B. GIRI

II

It is a pity that the Union Government, the leaders of which are pledged to usher in Socialism by time bound programmes, could not agree to some of the basic amendments unanimously sponsored by all the Trade Union members of the Select Committee, even though the Select Committee readily agreed to give as much time, as was asked for. It is indeed a disgrace that the Government, which amended the Constitution of India in three successive legislative outbursts in order to curtail the powers of the Supreme Court to meddle with the progressive measures they claim to be ushering in, could not accept the ruling of the Supreme Court that gratuity is a payment for past services rendered by the workmen and hence, it cannot be denied for any future misconduct.

Hence, sub-clause (6) of Clause 4 should be deleted *in toto*. Even if Sub-clause (6) (a) of Clause 4, providing for partial forfeiture to meet damages inflicted by the workmen by any act of omission or commission is retained, as a measure of compromise, sub-clause (6) (b) of Clause 4 should be deleted, because it goes counter to the protection granted to the workmen by our *status-quo* Supreme Court.

Clause 11 is a safeguard given to the employers, which would encourage them to flout the provisions of this Bill. So any aggrieved person or any interested trade union should be permitted to approach the Court directly. Making the authorisation of the controlling authority to file a suit after six months obligatory on the part of the appropriate Government is not sufficient guarantee to the claimant for gratuity, because the aggrieved person will have to file a Writ Petition in the High Court to force the Government to proceed against any employer.

The quantum of gratuity must also be enhanced at least to a minimum of 21 days. So clause 4(2) must also be amended accordingly.

Lastly, I am sorry, the Union Government did not agree to include the workers of civil bodies and local boards, of the construction agencies, the transport workers and the contract labour in Clause 1, thereby denying these categories, the benefit of getting gratuity. The coverage must be expanded to include at least these categories.

NEW DELHI;
April 29, 1972. N. SREEKANTAN NAIR

III

1. While agreeing with the points and arguments mentioned in the note of dissent submitted by Sarvashri Prasannbhai Mehta, Dr. Ranen Sen and S. B. Giri, I want to add some more points to make the bill fully serve its objects and purpose.

2. The Payment of Gratuity Bill being a social security measure must cover as wide a range of the workers and employees as possible. So, I suggest that in sub-clause (3) (a) of clause I add the following after the word "Railway company" "workers of any local body, any transport, any contract labour, any construction industry, any educational institution including college, school, technical institution or university; any hospital and clinic; any club, canteen or cooperative society and of any solicitors firms."

3. In clause 2, sub-clause (c) defines the 'continuous service' and it excludes interruption of work due to participation in 'illegal strike'. In the present industrial set up and under the existing industrial laws every strike can be declared as illegal. This provision will, therefore, deprive workers and employees from the benefits of gratuity. Therefore, I suggest the deletion of the following words in sub-clause (c) of clause 2 of the Payment of Gratuity Bill, 1971 (as reported by the Select Committee) "which is not illegal".

4. In sub-clause (s) of clause 2 of the bill, while defining the term 'wages', it does not include bonus, commission, house rent allowance, overtime wages and many other allowances. These allowances are part of wages of an employee. Bonus is nothing but a deferred wage. The concept of house rent was included in the need-based minimum wage formula worked out by the Fifteenth Labour Conference. The overtime allowance is paid to workers at a higher rate than the normal rate only to provide for higher compensation to cover up the excessive fatigue and hence it is a part of wage. Therefore, I suggest that after the words

"dearness allowance" of the same clause the remaining three lines beginning with "but does not....." be deleted.

5. Sub-clause (1) of clause 4 defines that for eligibility for the gratuity an employee is to render continuous service not less than five years. I suggest that in place of five years the qualifying period should be three years. After the word "resignation or", in sub-clause (1) (b) of clause 4, add the following words "discharge, dismissal and retrenchment'. Consequential changes are also to be made where five years have been mentioned as a qualifying period for the gratuity, and in all those places three years to be mentioned.

6. In sub-clause (2) of clause 4 of the reported Bill, the rate of gratuity has been fixed as fifteen days wages which I consider, not proper. I suggest that the following amendments be made in sub-clause (2) of clause 4—the words "fifteen days" be substituted by words "thirty days". Further in the second proviso of the same sub-clause, the words "seven days" be substituted by the words "fifteen days". The maximum amount of gratuity payable has been fixed at twenty months wages. I propose the deletion of this clause so that there may not be any upper limit and of ceiling of amount of gratuity payable to an employee.

7. Sub-clauses (6) (a) & (b) of clause 4 provide for the forfeiture of gratuity partly and wholly. This provision is totally against the principle of natural justice and norms of industrial relationship. The workers and employees earn this right. I, therefore, propose that sub-clauses (6) (a) & (b) be deleted in full.

8. Clause 9 provides the penalty for defaulting employers. The punishments provided in these clauses should be most stringent as an effective check against non-payment and or defaulters. Therefore, I propose that in sub-clause (1) of clause 9, the words "after six months" be deleted. In sub-clause (2) of clause 9, all the words "after one year" be deleted. Further, it is also proposed that the words beginning with "provided...." and ending with "ends of justice" in proviso to sub-clause (2) of clause 9 be deleted.

9. Sub-clause (1) of clause 11 be deleted and this I suggest so that an aggrieved worker and employee may get a free scope to move the competent court for penal action against the defaulting employer without depending on government machinery to take up his case.

10. The Bill should provide a safe custody for the adminstration and security of the gratuity money to be deposited by the employers which may be placed under the direct supervision and administration of Regional Provident Fund Commissioner.

11. The Bill should also provide that no income-tax would be charged on the amount of gratuity payable to an employee. Further a provision should be made so that a nominee of an employee is not required to produce a death duty clearance certificate, while claiming due gratuity.

NEW DELHI; DINEN BHATTACHARYA

May 2, 1972

Vaisakha 12, 1894 *(Saka)*

BILL NO. 154A OF 1971

THE PAYMENT OF GRATUITY BILL, 1971

(AS REPORTED BY THE SELECT COMMITTEE)

[*Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title, extent, application and commencement.

1. (*1*) This Act may be called the Payment of Gratuity Act, 1972.

(*2*) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(*3*) It shall apply to—

(*a*) every factory, mine, oilfield, plantation, port and railway company;

(*b*) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the [illegible] months, as the Central Government may, by notification, specify in this behalf.

(*4*) It shall come into force on such date as the Central Government may, by notification, appoint.

Defini tions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to an establishment—

(*a*) belonging to, or under the control of, the Central Government,

(*b*) having branches in more than one State,

(*c*) of a factory belonging to, or under the control of, the Central Government,

(*d*) of a major port, mine, oilfield or railway company, the Central Government,

(*ii*) in any other case, the State Government;

(*b*) "completed year of service" means continuous service for one year;

(c) "continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike which is not illegal or a lock-out or cessation of work not due to any fault of the employee concerned, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Explanation I.—In the case of an employee who is not in uninterrupted service for one year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than—

(*i*) 190 days, if employed below the ground in a mine, or

(*ii*) 240 days, in any other case, except when he is employed in a seasonal establishment.

Explanation II.—An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during the year;

(*d*) "controlling authority" means an authority appointed by the appropriate Government under section 3;

(*e*) "employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, *mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity,

or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957. 45 of 1950. 46 of 1950. 62 of 1957.

Explanation.—In the case of an employee, who, having been employed for a period of not less than five years on wages not exceeding one thousand rupees per mensem, is employed at any time thereafter on wages exceeding one thousand rupees per mensem, gratuity, in respect of the period during which such employee was employed on wages not exceeding one thousand rupees per mensem, shall be determined on the basis of the wages received by him during that period;

(*f*) "employer" means, in relation to any establishment, factory, *mine, oilfield, plantation, port, railway company or shop—

(*i*) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(*ii*) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(*iii*) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, * mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

(*g*) "factory" has the meaning assigned to it in clause (*m*) of section 2 of the Factories Act, 1948; 63 of 1948.

(*h*) "family", in relation to an employee, shall be deemed to consist of—

(*i*) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any,

(*ii*) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:

Provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire to exclude her husband from her family, the husband and his dependent parents shall no longer be deemed, for the purposes of this Act, to be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

Explanation.—Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him

shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee;

(*i*) "major port" has the meaning assigned to it in clause (*8*) of section 3 of the Indian Ports Act, 1908; 15 of 1908.

(*j*) "mine" has the meaning assigned to it in clause (*j*) of sub-section (*1*) of section 2 of the Mines Act, 1952; 35 of 1952.

(*k*) "notification" means a notification published in the Official Gazette;

(*l*) "oilfield" has the meaning assigned to it in clause (*e*) of section 3 of the Oilfields (Regulation and Development) Act, 1948; 53 of 1948.

(*m*) "plantation" has the meaning assigned to it in clause (*f*) of section 2 of the Plantations Labour Act, 1951; 69 of 1951.

(*n*) "port" has the meaning assigned to it in clause (*4*) of section 3 of the Indian Ports Act, 1908; 15 of 1908.

(*o*) "prescribed" means prescribed by rules made under this Act;

(*p*) "railway company" has the meaning assigned to it in clause (*5*) of section 3 of the Indian Railways Act, 1890; 9 of 1890.

(*q*) "retirement" means termination of the service of an employee otherwise than on superannuation;

(*r*) "superannuation", in relation to an employee, means,—

(*i*) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(*ii*) in any other case, the attainment by the employee of the age of fifty-eight years;

(*s*) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Controlling authority.

3. The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Payment of gratuity.

4. (*1*) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.—

(*a*) on his superannuation, or

(*b*) on his retirement or resignation, or

(c) on his death or * disablement due to accident or disease:

* * * * *

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or * disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs.

Explanation.—For the purposes of this section, * disablement means such disablement as * incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(*2*) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

(*3*) * * The amount of gratuity payable to an employee shall not exceed twenty months' wages.

(*4*) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(*5*) * * * Nothing in this section shall affect the right of an employee to receive better terms of gratuity * * * under any award or agreement or contract with the employer.

(*6*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(*b*) the gratuity payable to an employee shall be wholly forfeited—

(*i*) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(*ii*) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. * * * * * *

Power to exempt.

5. The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

Nomination.

6. (*1*) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (*1*) of section 4.

(*2*) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(*3*) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

(*4*) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

(*5*) A nomination may, subject to the provisions of sub-sections (*3*) and (*4*), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(*6*) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(*7*) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

Determination of the amount of gratuity.

7. (*1*) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.

(4) (*a*) **If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.**

Explanation.—**Where there is a dispute with regard to any matter specified in this clause the employee may make an application to the controlling authority for taking such action as is specified in clause (*b*).**

(*b*) **The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee, and, if as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.**

(*c*) **The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.**

(*d*) As soon as may be after a deposit is made under clause (*a*), the controlling authority shall pay the amount of the deposit—

(*i*) to the applicant where he is the employee; or

(*ii*) where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) **For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in** 5 of 1908. **respect of the following matters, namely:—**

(*a*) **enforcing the attendance of any person or examining him on oath;**

(*b*) **requiring the discovery and production of documents;**

(*c*) **receiving evidence on affidavits;**

(*d*) **issuing commissions for the examination of witnesses.**

(6) **Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of** 45 of 1860. **section 196, of the Indian Penal Code.**

(7) **Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:**

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Recovery of gratuity.

8. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at the rate of nine per cent. per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Penalties.

9. (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made thereunder shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Exemption of employer from liability in certain cases.

10. Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls

in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Cognizance of offences.

11. (*1*) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government:

Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a magistrate having jurisdiction to try the offence.

(*2*) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Protection of action taken in good faith.

12. No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of gratuity.

13. No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Act to override other enactments, etc.

14. The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

Power to make rules.

15. (*1*) The appropriate Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

(*2*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session * * * * immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

S. L. SHAKDHER,
Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1972